

Title 19 Chapter 6 HAZARDOUS SUBSTANCES

Part 2 Hazardous Waste Facility Siting Act

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19-6-201. Short title.

This part is known as the "Hazardous Waste Facility Siting Act."

19-6-202. Definitions.

As used in this part:

- (1) "Board" means the Solid and Hazardous Waste Control Board created in Section 19-1-106.
- (2) "Disposal" means the final disposition of hazardous wastes into or onto the lands, waters, and air of this state.
- (3) "Hazardous wastes" means wastes as defined in Section 19-6-102.
- (4) "Hazardous waste treatment, disposal, and storage facility" means a facility or site used or intended to be used for the treatment, storage, or disposal of hazardous waste materials, including but not limited to physical, chemical, or thermal processing systems, incinerators, and secure landfills.
- (5) "Site" means land used for the treatment, disposal, or storage of hazardous wastes.
- (6) "Siting plan" means the state hazardous waste facilities siting plan adopted by the board pursuant to Sections 19-6-204 and 19-6-205.
- (7) "Storage" means the containment of hazardous wastes for a period of more than 90 days.
- (8) "Treatment" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of any hazardous waste to neutralize or render it nonhazardous, safer for transport, amenable to recovery or storage, convertible to another usable material, or reduced in volume and suitable for ultimate disposal.

19-6-203. Other provisions relating to hazardous waste.

This part shall not be construed to supersede any other state or local law relating to hazardous waste, except as otherwise provided in Section 19-6-207.

19-6-204. Guidelines for facility siting -- Considerations in adopting.

- (1) The board shall adopt and publish guidelines for the location of hazardous waste treatment, storage, and disposal facilities. The guidelines shall ensure that facilities are sited so that the wastes located there will not constitute an unacceptable health hazard or impact the environment in an unacceptable manner.
- (2) Proposed guidelines for siting shall take into account the following considerations:
 - (a) the zoning classification of the site proposed and its proximity to present or projected land use dedicated to industrial development;
 - (b) the existing land uses and the density of population in areas neighboring the proposed site;
 - (c) the density of population in areas adjacent to probable hazardous waste delivery routes;
 - (d) the risk and impact of accidents which might occur during the transportation of hazardous wastes to the site;
 - (e) the determination of areas that are dedicated to an incompatible public use or are unsuitable for other reasons for the location of hazardous wastes;
 - (f) the geology of the proposed site with special attention to the presence of fault zones and the risk of contamination to ground and surface waters through leaching and runoff;
 - (g) the risk to life and property from fires or explosions that might occur if improper storage and disposal methods are used;
 - (h) the economic and environmental impact of the proposed facility site location upon local governmental units adjacent to, or within which, the facility is proposed for location;
 - (i) closure and postclosure monitoring and maintenance requirements; and
 - (j) other criteria required for the siting of hazardous wastes under state or federal law.

19-6-205. Siting plan -- Procedure for adoption -- Review -- Effect.

(1) After completion of the guidelines, the board shall prepare and publish a preliminary siting plan for the state. The preliminary siting plan is not final until adopted by the board in accordance with Subsection (2) and shall be based upon the guidelines adopted under Section 19-6-204 and be published within one year after adoption of the guidelines.

(2) (a) After completion of its guidelines, the board shall publish notice of intent to prepare a siting plan. The notice shall invite all interested persons to nominate sites for inclusion in the siting plan. It shall be published at least twice in not less than two newspapers with statewide circulation and shall also be sent to any person, business, or other organization that has notified the board of an interest or involvement in hazardous waste management

activities.

(b) Nominations for the location of hazardous waste sites shall be accepted by the board for a period of 120 days after the date of first publication of notice. Nominations may include a description of the site or sites suggested or may simply suggest a general area. In addition, any nomination may provide data and reasons in support of inclusion of the site nominated.

(c) The board, in cooperation with other state agencies and private sources, shall then prepare an inventory of:

- (i) the hazardous wastes generated in the state;
- (ii) those likely to be generated in the future;
- (iii) those being generated in other states that are likely to be treated, disposed of, or stored in the state;
- (iv) the sites within the state currently being used for hazardous waste and those suggested through the nomination process;

(v) the treatment, storage, and disposal processes and management practices that are required to comply with Section 19-6-108; and

(vi) an estimate of the public and private costs for meeting the long-term demand for hazardous waste treatment, disposal, and storage facilities.

(d) (i) After the hazardous waste inventory and cost estimate are complete, the board, with the use of the guidelines developed in Section 19-6-204, shall provide for the geographical distribution of enough sites to fulfill the state's needs for hazardous waste disposal, treatment, and storage for the next 25 years.

(ii) The board shall not exclude any area of the state from consideration in the selection of potential sites but, to the maximum extent possible, shall give preference to sites located in areas already dedicated through zoning or other land use regulations to industrial use or to areas located near industrial uses. However, the board shall give consideration to excluding an area designated for disposal of uranium mill tailings or for disposal of nuclear wastes unless the proposed disposal site is approved by the affected county through its county executive and county legislative body.

(e) The board shall also analyze and identify areas of the state where, due to the concentration of industrial waste generation processes or to favorable geology or hydrology, the construction and operation of hazardous waste treatment, disposal, and storage facilities appears to be technically, environmentally, and economically feasible.

(3) (a) The preliminary siting plan prepared pursuant to Subsection (2) shall, before adoption, be distributed to all units of local government located near existing or proposed sites.

(b) Notice of the availability of the preliminary siting plan for examination shall be published at least twice in two newspapers, if available, with general circulation in the areas of the state that potentially will be affected by the plan.

(c) The board shall also issue a statewide news release that informs persons where copies of the preliminary siting plan may be inspected or purchased at cost.

(d) After release of the preliminary siting plan, the board shall hold not less than two public hearings in different areas of the state affected by the proposed siting plan to allow local officials and other interested persons to express their views and submit information relevant to the plan. The hearings shall be conducted not less than 60 nor more than 90 days after release of the plan. Within 30 days after completion of the hearings, the board shall prepare and make available for public inspection a summary of public comments.

(4) (a) The board, between 30 and 60 days after publication of the public comments, shall prepare a final siting plan.

(b) The final siting plan shall be widely distributed to members of the public.

(c) The board, at any time between 30 and 60 days after release of the final plan, on its own initiative or that of interested parties, shall hold not less than two public hearings in each area of the state affected by the final plan to allow local officials and other interested persons to express their views.

(d) The board, within 30 days after the last hearing, shall vote to adopt, adopt with modification, or reject the final siting plan.

(5) (a) Any person adversely affected by the board's decision may seek judicial review of the decision by filing a petition for review with the district court for Salt Lake County within 90 days after the board's decision.

(b) Judicial review may be had, however, only on the grounds that the board violated the procedures set forth in this section, that it acted without or in excess of its powers, or that its actions were arbitrary or capricious and not based on substantial evidence.

(6) If the final siting plan is adopted, the board shall cause it to be published.

(7) After publication of the final siting plan, the board shall engage in a continuous monitoring and review process to ensure that the long-range needs of hazardous waste producers likely to dispose of hazardous wastes in

this state are met at a reasonable cost. An annual review of the adequacy of the plan shall be conducted and published by the board.

(8) (a) If necessary, the board may amend the siting plan to provide additional sites or delete sites which are no longer suitable.

(b) Before any plan amendment adding or deleting a site is adopted, the board, upon not less than 20 days' public notice, shall hold at least one public hearing in the area where the affected site is located.

(9) After adoption of the final plan, an applicant for approval of a plan to construct and operate a hazardous waste treatment, storage, and disposal facility who seeks protection under this part shall select a site contained on the final site plan.

(10) Nothing in this part, however, shall be construed to prohibit the construction and operation of an approved hazardous waste treatment, storage, and disposal facility at a site which is not included within the final site plan, but such a facility is not entitled to the protections afforded under this part.

19-6-206. Exclusive remedy for devaluation of property caused by approved facility.

(1) Before construction of a hazardous waste management facility, but in no case later than nine months after approval of a plan for a hazardous waste treatment, storage, or disposal facility, any owner or user of property adversely affected by approval may bring an action in a district court of competent jurisdiction against the owner of the proposed facility. If the court determines that the planned construction and operation of the hazardous waste management facility will result in the devaluation of the plaintiff's property or will otherwise interfere with the plaintiff's rights in the property, it shall order the owner to compensate the plaintiff in an amount equal to the value of the plaintiff's loss.

(2) The remedy provided in Subsection (1) is the exclusive remedy for owners or users aggrieved by the proposed construction and operation of a hazardous waste treatment, disposal, or storage facility, and no court has jurisdiction to enjoin the construction or operation of any facility located at a site included in the siting plan adopted by the board.

(3) Nothing in this part prevents an owner or user of property aggrieved by the construction and operation of a facility from seeking damages that result from a subsequent modification of the design or operation of a facility but damages are limited to the incremental damage that results from the modification. Any action for damages from a modification shall be brought within nine months after the plans for modification of the design or operation of the facility are approved.

(4) For the purpose of assessing damages, the value of the rights affected is fixed at the date the facility plan is approved and the actual value of the right at that date is the basis for the determination of the amount of damage suffered, and no improvements to the property subsequent to the date of approval of the plans shall be included in the assessment of damages. Similarly, for any subsequent modification of a facility, value is fixed at the date of approval of the amended facility plan.

(5) The owner or operator of a proposed facility may, at any time before an award of damages, abandon the construction or operation of the facility or any modification and cause the action to be dismissed. As a condition of dismissal, however, the owner or operator shall compensate the plaintiff for any actual damage sustained as a result of construction or operation of the facility before abandonment together with court costs and a reasonable attorney's fee.

(6) Nothing in this part prevents a court from enjoining any activity at a hazardous waste facility that is outside of, or not in compliance with, the terms and conditions of an approved hazardous waste operations plan.

19-6-207. Facility at site approved in siting plan -- Exemption from zoning and local approval requirements -- Transportation restrictions limited.

(1) The construction or operation of a hazardous waste treatment, storage, or disposal facility at a site included within the siting plan is not required to conform to any local zoning or other land use regulation, law, or ordinance.

(2) The owner of any hazardous waste treatment, storage, or disposal facility proposed to be located at a site included in the siting plan is not required to obtain approval of the site from any county or municipal planning commission or similar authority and no local unit of government may prohibit or unduly restrict the transportation of hazardous waste through the governmental unit to an approved hazardous waste treatment, storage, or disposal facility.

19-6-208. Facilities subject to Industrial Facilities and Development Act.

The financing, acquiring, constructing, reconstructing, improving, maintaining, equipping, or finishing of a

hazardous waste treatment, disposal, or storage facility is deemed, where applicable, to be a "project," subject to the Utah Industrial Facilities and Development Act.